IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE **P.D.DINAKARAN**
and
THE HONOURABLE MRS.JUSTICE **CHITRA VENKATARAMAN**

W.P.Nos.8583 and 8584 of 2002

A.Fatima .. Petitioner
in both writ petitions

versus

The Appropriate Authority
Income Tax Department
Annex Building, II Floor
121, Nungambakkam High Road
Chennai-34. .. Respondents
both writ petition

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**PRAYER:** W.P.Nos.8583 and 8584 of 2002 are filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records in proceedings of the respondent dated 27.2.2002 in F.No.AA/MDS11(491)2/2001-02 and AA/MDS/11(491)02/ 2001-02 respectively, quash the same and consequently forbear the respondent from interfering with the peaceful possession and enjoyment of the property by the petitioner herein in Old No.36, New Door No.10, Venkataraman Street, T.Nagar, Chennai-17 by force, invoking any of the provisions of the Income Tax Act, 1961.

For petitioners in both : Mr.R.Achuthan

For respondent in both : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

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**ORDER**

(Order of the Court was made by **CHITRA VENKATARAMAN,J.**)

W.P.No.8583 of 2002 is against the order of the Appropriate Authority, Income Tax Department to quash the order dated 27.2.2002 and to forbear the respondent from interfering with the possession and enjoyment of the property.

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2. The transferor one Shri.Raman Lal N.Trivedi and the transferee M/s.Jain Housing and Construction Ltd. filed Form 37-I for the transfer of the property at New No.36, Venkatarama Iyer Street, Chennai-17, for an apparent consideration of Rs.52,00,000/- (Rupees fifty two lakhs only). By order dated 27.2.2002, after hearing the parties, the appropriate authority purchased the property under Section 269-UD(1). A show cause notice was served on the writ petitioner herein since his name was mentioned in Form 37-I and was called upon to produce evidence in support of his occupancy of a part of the property. It is stated in the order dated 27.2.2002 that the writ petitioner did not produce any evidence in support of the claim as to the occupancy as a tenant. In the circumstances, the appropriate authority held that the encumbrance was with a view to defeat the provisions of Chapter XX-C and declared such encumbrance as void as per the provisions of Section 269-UE(1). Against this order, the writ petition is preferred, contending that he was in occupation from the year 1990 and that he had filed documents before the City Civil Court in O.S.No.6808 of 2001. In the circumstances, the petitioner submitted that the respondent could not require a person in lawful possession to vacate the property.

3. W.P.No.8584 of 2002 is against the order dated 27.2.2002 wherein the respondent had called upon the petitioner herein to surrender possession in view of the order of preemptive purchase passed by the respondent. The contentions in both the writ petitions are identical.

4. Learned counsel appearing for the petitioner contended that the order calling upon the petitioner to vacate the premises is totally unsustainable.

5. A perusal of the order shows that the petitioner was working as a watchman to the building. It is stated that the owner asked the petitioner to live in the rear portion of the building as a tenant. During October 2001, the petitioner was asked to vacate the property without giving the salary. Hence, he filed a suit in O.S.No.6808 of 2001 on the file of the V Assistant City Civil Court and sought for interim injunction. He submitted that he had expended on the maintenance of the property, including payment of electricity and he needs to be paid a sum of Rs.2,50,000/-. He requested that the claim, hence, be considered and orders passed.

6. As seen from the order dated 27.2.2002, the respondent had clearly stated that the petitioner had not produced any evidence in support of his claim and that the occupancy of the portion itself was found to be unlawful. In the circumstances, in the absence of any material to disturb the said finding, it is not possible for this Court to interfere with the order of the

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respondent herein. Even otherwise, we do not find any merit in the writ petition. Consequently the writ petitions fail and are therefore dismissed. There will, however, be no order as to costs.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

The Appropriate Authority
Income Tax Department
Annex Building, II Floor
121, Nungambakkam High Road
Chennai-34.

+one cc Mr. R.Achunathan, Advocate sr no. 12022
+ one cc to Mrs. Pushya Sitaraman, SSC It Department

gv(co)
nm(26.03.07)

W.P.Nos.8583 and 8584 of 2002

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